

UNALAKLEET NATIVE CORP.

IBLA 85-340

Decided August 15, 1986

Appeal from a decision of the Alaska State Office, Bureau of Land Management, rejecting Native village corporation selection application in part with respect to land embraced in a Federal installation. F-14952-A, AA-41191.

Affirmed.

1. Alaska Native Claims Settlement Act: Definitions: Public Lands --
Alaska Native Claims Settlement Act: Native Land Selections:
Selection Limitations -- Alaska Native Claims Settlement Act: Native
Land Selections: Village Selections -- Alaska Native Claims
Settlement Act: Withdrawals and Reservations: Withdrawals for
Native Selection: Generally

A decision finding that certain lands are not "public lands" within the meaning of sec. 3(e) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1602(e) (1982), and hence not subject to Native village selection, will be affirmed where the record discloses the lands were used in connection with the administration of a Federal installation during the selection period, notwithstanding the fact the use was abandoned after the selection period.

APPEARANCES: June Degnan, Unalakleet Native Corporation, for appellant;
Dennis J. Hopewell, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE GRANT

The Unalakleet Native Corporation has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated December 19, 1984, rejecting selection application, F-14952-A, to the extent it includes land embraced in a Federal installation.

In May 1974 appellant filed a selection application (F-14952-A) on behalf of the Native village of Unalakleet for 16,609.94 acres of public land, including sec. 3, T. 19 S., R. 11 W., Kateel River Meridian, Alaska, pursuant to section 12(a) of the Alaska Native Claims Settlement Act (ANCSA),

43 U.S.C. § 1611(a) (1982). Public land subject to selection had been withdrawn for selection by the Native village corporation pursuant to section 11(a) of ANCSA, 43 U.S.C. § 1610(a) (1982). Section 3(e) of ANCSA, 43 U.S.C. § 1602(e) (1982), provides that the term "public lands" is defined in part as including "all Federal lands and interests therein located in Alaska except: (1) the smallest practicable tract, as determined by the Secretary, enclosing land actually used in connection with the administration of any Federal installation." (Emphasis added.) Hence, land actually used in connection with a Federal installation would be excluded from any conveyance to the Native village corporation.

On March 7, 1978, BLM was informed by the United States Department of the Army that there was a Federal installation, known as the Unalakleet National Guard site (AA-41191), on land selected by appellant, specifically 0.28 acres of land situated in sec. 3, T. 19 S., R. 11 W., Kateel River Meridian, Alaska. The site had been permitted to the Department of the Army by the village council of Unalakleet pursuant to a use permit, dated April 24, 1959, which ran from May 1, 1959, to April 30, 1984. ^{1/} The permit authorized the construction of a building to be used by the local unit of the Alaska National Guard. The permit further provided it could be renewed for 25 years "provided that the property is still being used for Alaska National Guard purposes."

By notice dated August 25, 1982, BLM required the Department of the Army to provide a "justification" for retention of the land in the National Guard site in Federal ownership, pursuant to section 3(e) of ANCSA, 43 U.S.C. § 1602(e) (1982). On December 14, 1982, the Department of the Army responded to BLM's request, enclosing a copy of a November 24, 1982, letter from the Department of Military Affairs for the State of Alaska which addressed certain questions posed by BLM. The letter declared that Federal use of the National Guard site had begun on April 24, 1959, a building was constructed "in 1959," the surrounding land was used to "support training activities," and, as of December 18, 1971, the date of enactment of ANCSA, the site was being used as a National Guard armory. In response to the question "[w]hether any action has taken place between December 18, 1971, and December 18, 1974, that would reduce the area needed," the letter indicated: "None."

The record also indicates that use of the site for National Guard purposes has been abandoned since 1983. In an August 31, 1982, letter the Department of the Army advised BLM of arrangements for relocation of the armory facility. On May 26, 1983, BLM received a letter dated May 16, 1983, indicating the facility had been relocated to a new site. A written confirmation of a telephone conversation with a representative of Unalakleet Native Corporation, dated October 31, 1983, discloses the armory was not vacated until "last summer."

^{1/} A copy of a BLM letter dated Oct. 6, 1982, appearing in the file explains:

"The permit * * * was necessary because at the time of issuance, the village of Unalakleet was considered to be a 'Reserve' set aside by legislation for Native use. Sec. 19(a) of ANCSA [43 U.S.C. § 1618(a) (1982)] revoked this reserve status for Unalakleet, hence the permit was without force after December 18, 1971."

In a July 27, 1984, memorandum to the Chief, Branch of ANCSA Adjudication, the Deputy State Director for Conveyance Management concluded the "entire parcel," i.e., the full 0.28 acres, should be retained in Federal ownership as the "smallest practicable tract, enclosing land actually used in connection with the National Guard activities at Unalakleet," based on the information contained in the record, even though "no further use" of the site by the Department of the Army was "anticipated." The Deputy State Director noted that the "entire area surrounding the building was utilized for troop assemblies, drill grounds, equipment inspections and similar activities."

In its December 1984 decision, BLM rejected appellant's selection application to the extent it includes the land within the National Guard site, which had been determined "to be retained as a Federal installation" pursuant to section 3(e) of ANCSA. Appellant has appealed from this decision.

In its statement of reasons for appeal, appellant contends it is entitled to the land within the National Guard site because the Native village owns the land as evidenced by the use permit issued in 1959, the National Guard has moved to another location, and appellant is currently using the land.

In an answer to appellant's statement of reasons, BLM argues that, for purposes of determining appellant's entitlement to the land within the National Guard site, BLM must determine whether the site was "actually used in connection with the administration of any Federal installation" under 43 U.S.C. § 1602(e)(1) (1982), by referring to use between December 18, 1971, and December 18, 1974, i.e., the "selection period," in accordance with 43 CFR 2655.2(a). BLM contends the site was actually used during that time period and, hence, must be retained in Federal ownership, despite the fact that Federal use subsequently terminated. We agree.

[1] As noted above, appellant's selection application was filed pursuant to section 12(a) of ANCSA, 43 U.S.C. § 1611(a) (1982), which provides that the selection "shall be made from lands withdrawn by section 1610(a) of this title." The latter section provides that certain "public lands" in townships enclosing certain Native villages, including Unalakleet, and certain surrounding townships are withdrawn, subject to valid existing rights. 43 U.S.C. § 1610(a) (1982). However, pursuant to section 3(e) of ANCSA, 43 U.S.C. § 1602(e) (1982), "public lands" subject to withdrawal and selection by Native village corporations do not include land "actually used in connection with the administration of any Federal installation." The regulation at 43 CFR 2655.2(a) further provides that, for purposes of determining actual use under section 3(e), BLM shall determine whether a site was used "as of December 18, 1971," and whether such "use was continuous, taking into account the type of use, throughout the appropriate selection period." Under section 12(a) of ANCSA, the selection period ended on December 18, 1974, i.e., "three years from December 18, 1971." 2/

2/ 43 CFR 2655.0-5(b) defines "appropriate selection period" as "the statutory or regulatory period within which the lands were available for Native selection under the act." (Emphasis added.)

Thus, the Board has held that land will be considered to have been excluded from withdrawal and selection by a Native village corporation pursuant to section 3(e) of ANCSA, where it was actually used in connection with a Federal installation between December 18, 1971, and December 18, 1974. 3/ Federal Aviation Administration, 83 IBLA 382 (1984); Ukpeagvik Inupiat Corp., 81 IBLA 222 (1984). Further, the Board has held that use during the selection period is dispositive of the question whether a Native village corporation is entitled to the land in the case of a section 3(e) determination, and it is immaterial what use, if any, is made of the land after the critical time period. Ukpeagvik Inupiat Corp., supra. Thus, even if land ceased to be used in connection with a Federal installation after the end of the selection period, the land would be retained in Federal ownership. This is the situation in this case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

R. W. Mullen
Administrative Judge.

3/ Because we are here determining appellant's entitlement to Federal land under ANCSA and its implementing regulations, it is irrelevant for purposes of this case that Native village use of the land predated use as a National Guard armory or that the latter use was sanctioned prior to ANCSA by a permit granted by the Native village. See note 1, supra. Appellant's entitlement is defined by the statute and regulations so as to exclude the land used as a National Guard armory during the selection period, regardless of any historical use.

